



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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IFW

APPLICANT: MASARU MIZUTANI

DOCKET: 6116.61001

SERIAL NO.: 09/933,517

EXAMINER: MAYO, TARA

FILED: 08/20/2001

ART UNIT: 3671

TITLE: POOL ON THE SEA USING DEEP-SEA WATER AND  
ITS SURROUNDING FACILITIES

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

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CERTIFICATE OF MAILING

I hereby certify that on this 19th ay of October, 2005, this correspondence is being deposited with the U.S. Postal Service as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

*Alice B. Vanicek*

Alice B. Vanicek

TRANSMITTAL OF BRIEF ON APPEAL

Dear Sir:

Pursuant to the provisions of 37 C.F.R. 1.192, the appellant is hereby submitting three (3) copies of a Brief on Appeal in the above-captioned patent application.

Please charge the \$250.00 appeal brief filing fee required by 37 C.F.R. 1.17(c), and any other cost or credit any overpayment associated with the filing of this Brief on Appeal, to our Deposit Account No. 17-0055.

Respectfully submitted,

*Handwritten signature of Gavin J. Milczarek-Desai*

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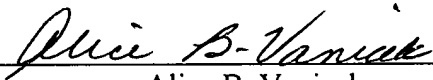
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\_\_\_\_\_  
Alice B. Vanicek

TO THE COMMISSIONER FOR PATENTS

BRIEF ON APPEAL

Dear Sir:

This is an appeal from the final rejection dated 19 May 2005.

10/24/2005 BABRAHA1 00000073 170055 09933517

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## REAL PARTY IN INTEREST

The real party in interest is Keiny Corporation by virtue of an assignment from the inventor recorded on 8/20/01 at reel 012097, frame 0529.

## RELATED APPEALS AND INTERFERENCES

No related appeals or interferences are currently pending.

## STATUS OF CLAIMS

Prior to final rejection, claims 1-7 were cancelled and claims 30-43 were withdrawn without prejudice. Hence, claims 8-29 and 44 are currently pending and are the subject of this appeal.

## STATUS OF AMENDMENTS

No amendments were submitted after the final Office Action.

## SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 8 specifies a sea-water swimming pool that includes a swimming pool structure 1 floating on a sea (Fig. 1 and page 8, lines 6-22) and means for collecting and supplying deep-sea water (Fig. 1, reference numerals 2, 2a, 2b, 5a, 5b, and 6; page 8, lines 18-25)

to the swimming pool structure 1. Surface-sea water and aquatic animals are substantially excluded from the swimming pool structure (for a structure that is designed to scare aquatic animals away from the swimming pool structure, see Fig. 1, reference numeral 10; page 13, lines 17-26; and page 14, lines 1-15; for disclosure relating to using deep-sea water exclusively, see page 3, lines 3-5; page 11, lines 13-20; and page 14, lines 21-22; for disclosure of a structure that exclusively supplies deep-sea water to the swimming pool structure, see page 12, lines 7-20 and Fig. 1, numeric references 2 and 2a) .

Dependent claim 9 states that the sea-water swimming pool further includes means for mooring 11 and 15 the swimming pool structure 1 at a fixed location (page 12, line 26 and page 13, lines 1-3) .

Dependent claim 10 specifies that the means for mooring includes an anchor 3 (Fig. 1; page 8, lines 18-22).

Dependent claims 11 and 12 state that the sea-water swimming pool includes a propulsion device 9 (Fig. 1; page 9, lines 1-4).

Dependent claim 13 specifies that the propulsion device of the swimming pool structure includes a propeller 9 (Fig. 1; page 9, lines 1-4).

Dependent claims 14 and 15 state that the sea-water swimming pool includes a plurality of extensions 10 protruding from the swimming pool structure and adapted to protect the swimming pool from attacks by sea creatures (Fig. 1; page 14, lines 9-12).

Dependent claims 16 and 17 specify that the sea-water swimming pool includes means for draining (Fig. 1, numeric references 5b and 7) the deep-sea water from the swimming pool structure (page 14, lines 21-25).

Dependent claims 18 and 19 state that the sea-water swimming pool includes a facility for enabling fishing 17 from a side of the swimming pool structure (Fig. 2; page 15, lines 21-24).

Dependent claims 20 and 21 state that the sea-water swimming pool includes means for generating and mixing air bubbles 18 into the deep-sea water supplied to the swimming pool 1 (Fig. 2 and 3; page 16, lines 15-17).

Dependent claims 22 and 23 specify a sea-water swimming pool including means for solar power generation 19 (Fig. 2; page 16, lines 21-23).

Dependent claims 24 and 25 specify a sea-water swimming pool that includes means for wind power generation 23 (Fig. 4; page 16, line 24).

Dependent claims 26 and 27 state that the sea-water swimming pool includes a sea-water desalination plant 14 (Fig. 1; page 19, lines 1-5).

Dependent claims 28 and 29 specifies that the means for collecting and supplying deep-sea water to the swimming pool structure includes a check valve which only allows an upward flow of the deep-sea water (page 17, lines 21-26).

Independent claim 44 specifies a sea-water swimming pool having a swimming pool structure 1 (Fig. 1 and page 8, lines 6-22) or 13 (Fig. 5 and page 18, lines 10-15) and means for collecting and supplying deep-sea water (Fig. 1, reference numerals 2, 2a, 2b, 5a, 5b, and 6; page 8, lines 18-25; Fig. 5, numeric references 2, 5c, and 12) to the swimming pool structure. Surface-sea water and aquatic animals are substantially excluded from the swimming pool structure (for a structure that is designed to scare aquatic animals away from the swimming pool structure, see Fig. 1, reference numeral 10; pages 13, lines 17-26; and page 14, lines 1-15; for disclosure relating to using deep-sea water exclusively, see page 3, lines 3-5; page 11, lines 13-20; and page 14, lines 21-22; for disclosure of a structure that exclusively supplies deep-sea water to the swimming pool structure, see page 12, lines 7-20 and Fig. 1, numeric references 2 and 2a) .

#### GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The sole ground of rejection is that of claims 8-29 and 44 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.

## ARGUMENT

For convenience, the Appellant has attached as Exhibit A a copy of the drawings filed in the above-identified application. The drawings consist of Figures 1-6.

### Rejection of Claims 8-29 and 44 under 35 U.S.C. 112 as Failing to Comply with the Written Description Requirement.

In response to the Office Action proceeding final rejection, independent claims 8 and 44 were amended to recite the language “wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure.” Thus, all claims under appeal incorporate these limitations. The Appellant respectfully submits that the exclusion of surface-sea water and aquatic animals from the swimming pool structure of the invention is explicitly and/or implicitly disclosed in the specification. Moreover, given the knowledge of one of ordinary skill in the art and the embodiments and advantages disclosed in Appellant’s specification, the exclusion of surface-sea water and aquatic animals from the swimming pool structure is an inherent functional attribute of the invention.

### Standards for Determining Compliance with 35 U.S.C. 112

As stated in the *Manual of Patent Examination Practice*, an objective standard for determining compliance with the written description requirement is, “does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.” *In re*

*Gosteli*, 872 F.2d 1008, 1012; 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64; 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed.

The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement. MPEP 2163.02. Indeed, to comply with the written description requirement of 35 U.S.C. 112, first paragraph (or to be entitled to an earlier priority date or filing date under 35 U.S.C. 119, 120, or 365(c)), each claim limitation must be expressly, implicitly, or inherently supported in the originally filed disclosure. MPEP § 2163.05.

Re: Claims 8-29 and 44

The recitation of “wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure” in independent claims 8 and 44 is explicitly and/or implicitly disclosed in the application as filed. Examining the “surface-sea water exclusion” limitation first, page 3, lines 3-5, explicitly discloses “It is an object...to provide a pool on the sea which uses pure and clean deep-sea water, and provides a deep-sea surround environment.” By definition, “pure and clean” deep-sea water cannot contain surface-sea water lest it lose its purity and cleanliness. Moreover, the specification makes clear the advantages of using deep-sea water are based on its unique purity and cleanliness characteristics, such as “it preferably contains few



parasitic species...few microorganisms, and is comparatively free of heavy metals and artificial pollutants” (page 11, lines 16-19). Furthermore, Appellant’s specification reinforces the exclusive use of deep-sea water by warning “if the supplied deep-sea water is not maintained fresh as all times, it loses its deep-sea water characteristics” (page 14, lines 21-22). Hence, adding surface-sea water to the swimming pool of the invention would only serve to dilute or destroy the purity and cleanliness rational for using deep-sea water. Finally, the exclusion of surface-sea water is implicitly disclosed in that Appellant’s application specifies *nothing but deep-sea water* for use within the swimming pool structure of all embodiments of the invention. Indeed, all structures that supply water to the swimming pool exclusively supply deep-sea water (for example, see page 12, lines 7-20, and Fig. 1, numeric references 2 and 2a).

Regarding the “aquatic animal exclusion limitation,” a structure that is designed to scare aquatic animals away from the swimming pool structure is explicitly disclosed in Fig. 1 at reference numeral 10. Furthermore, the specification discloses that “there is a possibility that [the pool] may be attacked by sharks or other sea creatures that tend to be aggressive. It would be desirable, therefore, to provide shields on the bottom surface of the pool...so that safety of the pool can be maximized” (page 13, lines 17-26). Accordingly, the specification discloses providing “extensions 10” and “a device for generating frequencies which sea live, such as sharks, hates” for the purpose of frightening away sea creatures (page 14, lines 1-15). Thus, it is clear that the Appellant discloses both the desirability of excluding aquatic animals from the swimming pool structure and structural members that accomplish that objective.

In addition to being explicitly and/or implicitly disclosed, the recitation of “wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure” in independent claims 8 and 44 also is inherently taught in the application as filed. First, as a practical matter, it would make no sense to pump or use surface water in the swimming pool of the invention because the benefits of specifically using deep-sea water would be diluted or lost (see, for example, page 14 “if the supplied deep-sea water is not maintained fresh as all times, it loses its deep-sea water characteristics” (lines 21-22) and page 11, line 26 though page 12, lines 1-2 “The pool on the sea according to the present invention aims to effectively use such deep-sea water for these unique characteristics”). Indeed, this is why the Appellant disclosed *nothing but deep-sea water* for filling and use in all embodiments of the invention. In view of the fact that every embodiment of the claimed swimming pool utilizes only deep-sea water and the many benefits and reasons for using deep-sea water, it defies logic that one of ordinary skill in the art would understand the specification to teach anything other than exclusive deep-sea water use.

Furthermore, the Appellant’s amendment reciting the “substantial exclusion of aquatic animals” merely excludes elements that are inherently not found in the normal use of a swimming pool. In normal use, a swimming pool inherently functions to exclude undesirable organisms (for example, through filtering and the use of chemicals). Similarly, the exclusion of marine life from a swimming pool structure is an inherent or normal swimming pool use. Moreover, if aquatic animals are sucked through a pump, the pump is likely to clog or break. Thus, the substantial exclusion of aquatic animals from the swimming pool structure would be inherently understood by one of ordinary skill in the art of swimming pool design and construction in order to avoid this undesirable consequence.

In view of the foregoing, the Appellant submits that the claims as they presently stand comply with 35 U.S.C. 112, first paragraph. Accordingly, it is respectfully requested that the rejections of the claims be reversed in their entirety.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Milczarek-Desai', written in a cursive style.

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## CLAIMS APPENDIX

8. A sea-water swimming pool, comprising:

a swimming pool structure floating on a sea; and

means for collecting and supplying deep-sea water to the swimming pool structure,

wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure.

9. The sea-water swimming pool of Claim 8, further comprising means for mooring said swimming pool structure at a fixed location.

10. The sea-water swimming pool of Claim 9, wherein said means for mooring includes an anchor.

11. The sea-water swimming pool of Claim 8, further comprising a propulsion device.

12. The sea-water swimming pool of Claim 9, further comprising a propulsion device.

13. The sea-water swimming pool of Claim 12, wherein said propulsion device includes a propeller.

14. The sea-water swimming pool of Claim 8, further comprising a plurality of extensions protruding from said swimming pool structure and adapted to protect the swimming pool from attacks by sea creatures.

15. The sea-water swimming pool of Claim 12, further comprising a plurality of extensions protruding from said swimming pool structure and adapted to protect the swimming pool from attacks by sea creatures.

16. The sea-water swimming pool of Claim 8, further comprising means for draining said deep-sea water from the swimming pool structure.

17. The sea-water swimming pool of Claim 15, further comprising means for draining said deep-sea water from the swimming pool structure.

18. The sea-water swimming pool of Claim 8, further comprising a facility for enabling fishing from a side of said swimming pool structure.

19. The sea-water swimming pool of Claim 17, further comprising a facility for enabling fishing from a side of said swimming pool structure.

20. The sea-water swimming pool of Claim 8, further comprising means for generating and mixing air bubbles into the deep-sea water supplied to said swimming pool.

21. The sea-water swimming pool of Claim 19, further comprising means for generating and mixing air bubbles into the deep-sea water supplied to said swimming pool.

22. The sea-water swimming pool of Claim 8, further comprising means for solar power generation.

23. The sea-water swimming pool of Claim 21, further comprising means for solar power generation.

24. The sea-water swimming pool of Claim 8, further comprising means for wind power generation.

25. The sea-water swimming pool of Claim 23, further comprising means for wind power generation.

26. The sea-water swimming pool of Claim 8, further comprising a sea-water desalination plant.

27. The sea-water swimming pool of Claim 25, further comprising a sea-water desalination plant.

28. The sea-water swimming pool of Claim 8, wherein said means for collecting and supplying deep-sea water to the swimming pool structure includes a check valve which only allows an upward flow of the deep-sea water.

29. The sea-water swimming pool of Claim 27, wherein said means for collecting and supplying deep-sea water to the swimming pool structure includes a check valve which only allows an upward flow of the deep-sea water.

44. A sea-water swimming pool, comprising:

a swimming pool structure; and

means for collecting and supplying deep-sea water to the swimming pool structure,  
wherein surface-sea water and aquatic animals are substantially excluded from said swimming pool structure.

## EVIDENCE APPENDIX

Not applicable.



## RELATED PROCEEDINGS APPENDIX

Not applicable.

## EXHIBIT A

Attached hereto are Figs. 1-6 of the application under appeal.







FIG. 3

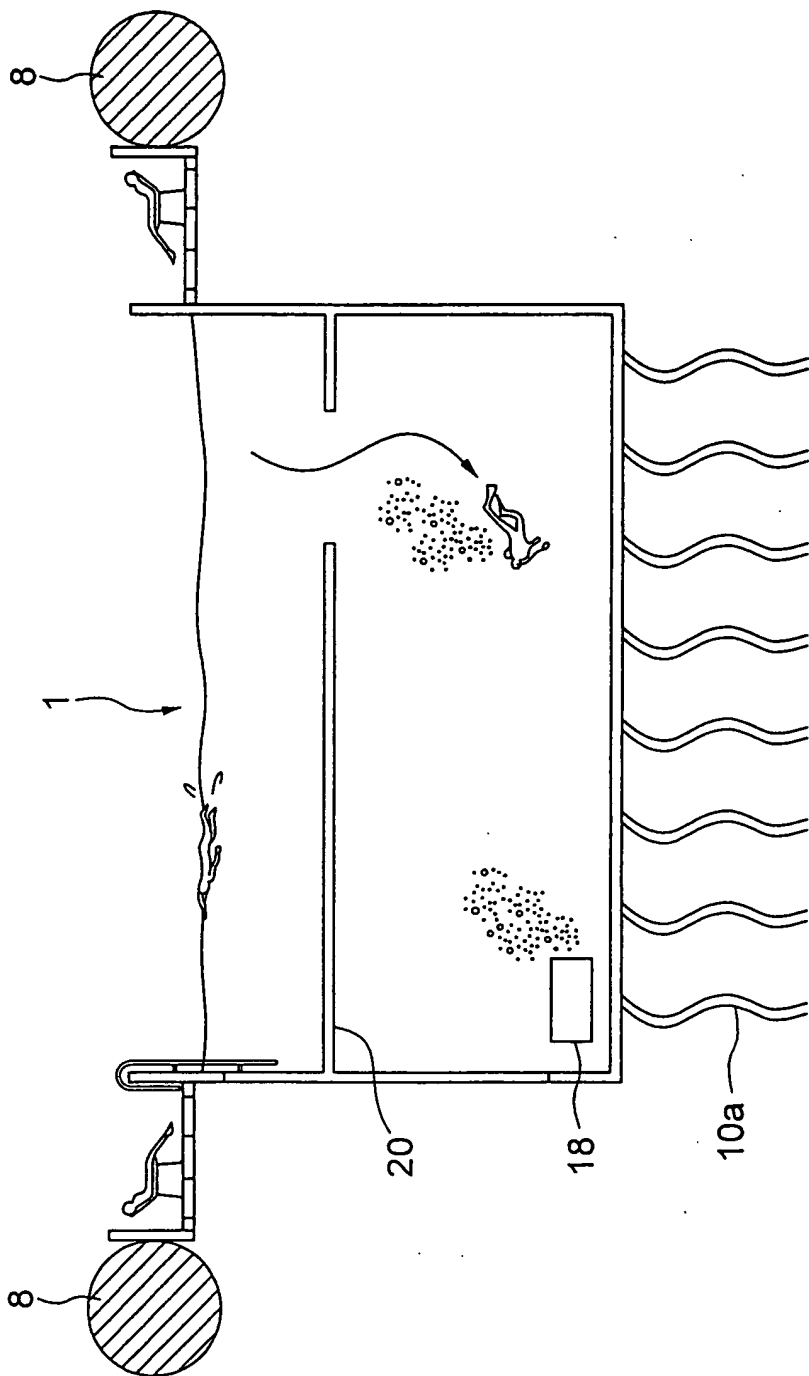




FIG. 4

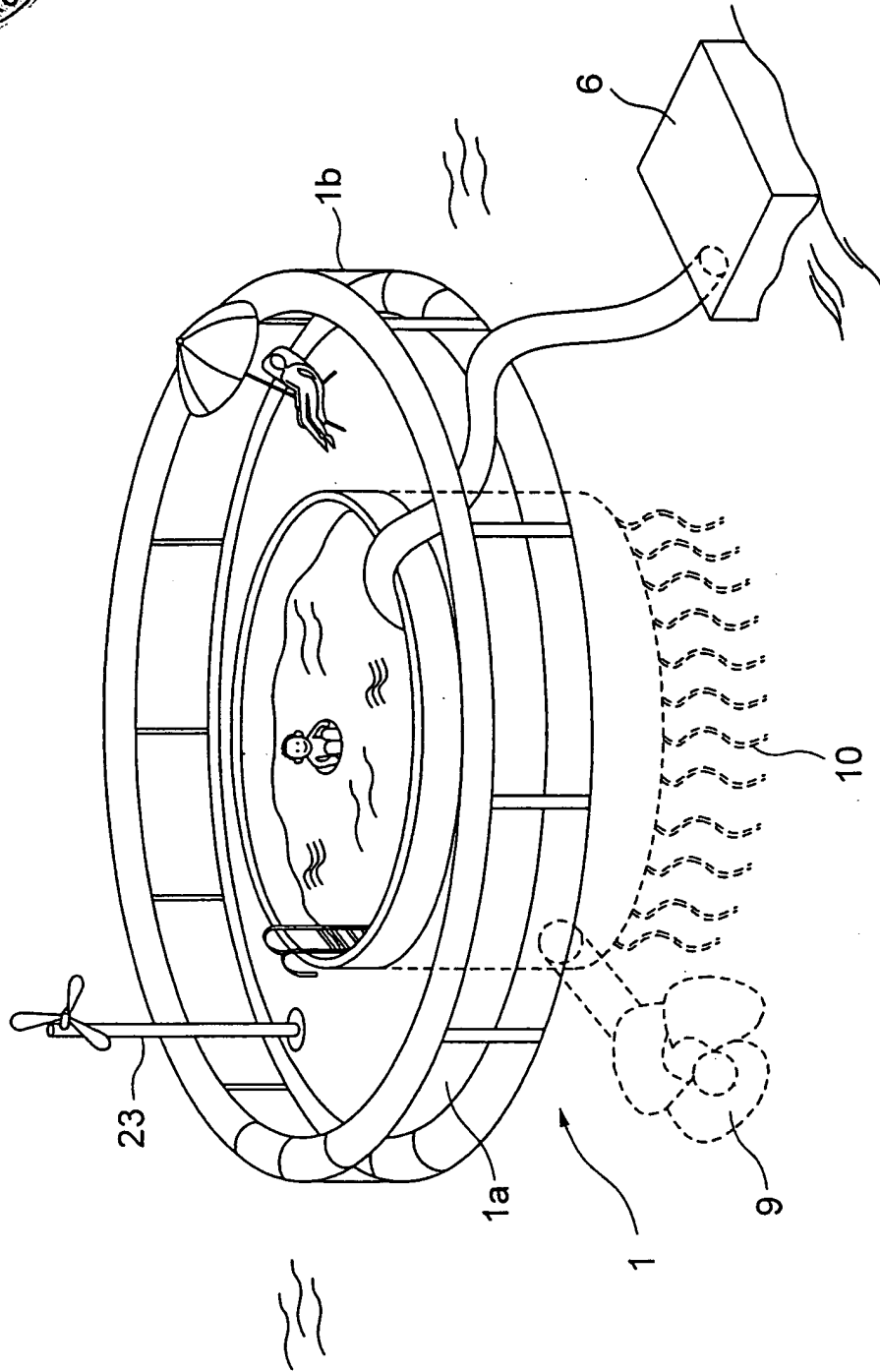




FIG. 5

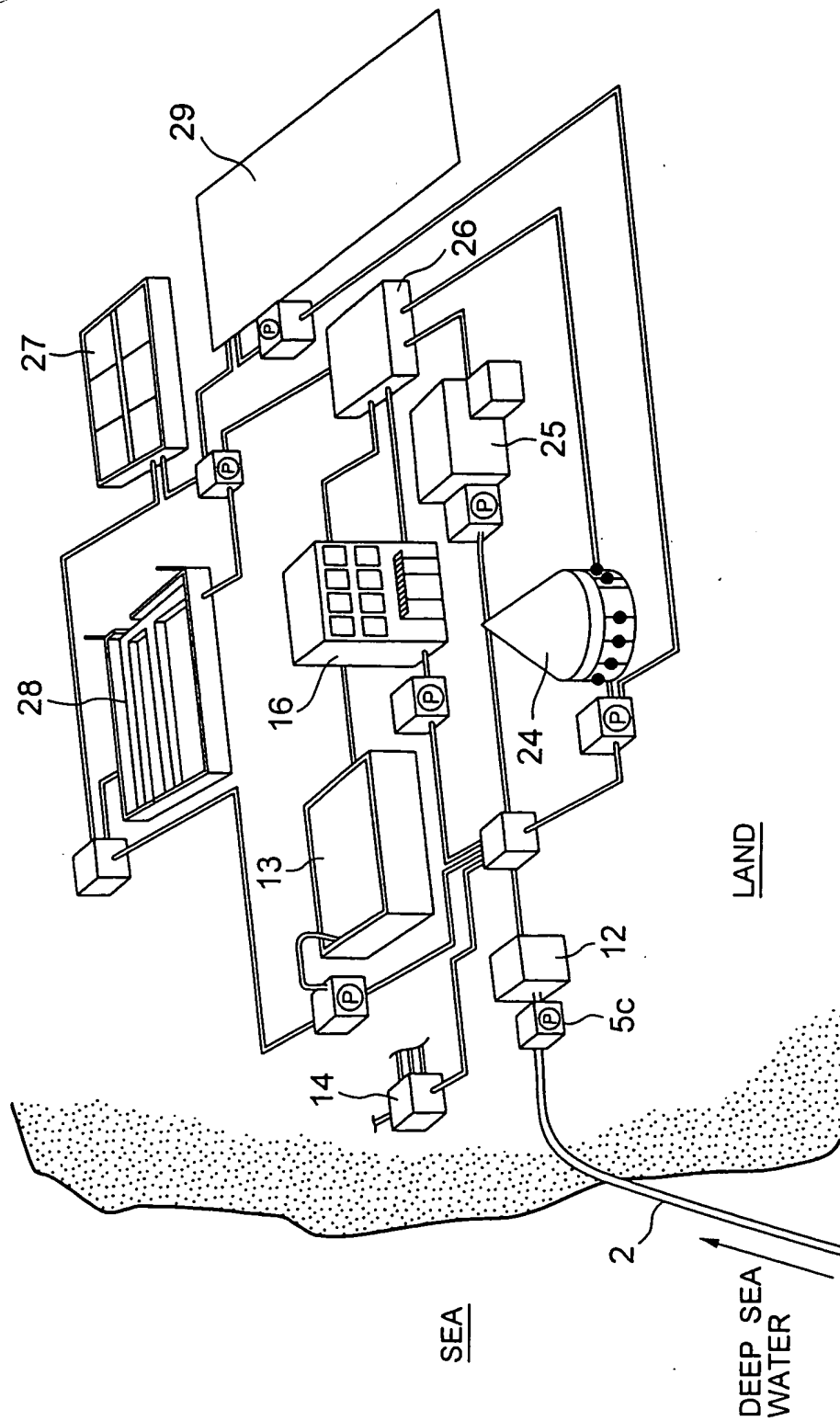




FIG. 6

